

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	8:04CR64
Plaintiff,)	
)	
vs.)	ORDER
)	
RUSSELL FRAUENDORFER,)	
)	
Defendant.)	

This matter is before the court pursuant to defendant's notice of appeal, Filing No. [108](#), of this court's order, Filing No. [107](#), denying defendant's motion to vacate under [28 U.S.C. § 2255](#). Pursuant to [28 U.S.C. § 2253\(c\)](#), this court must determine whether it should issue a certificate of appealability in this case. The court has again reviewed the claims made by the defendant in his § 2255 motion and finds there is no "substantial showing of a denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

Before the defendant may appeal the denial of his § 2255 motion, a "Certificate of Appealability" must issue pursuant to the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). [Slack v. McDaniel, 529 U.S. 473, 476 \(2000\)](#) (holding that when a habeas corpus petitioner seeks to initiate an appeal of the dismissal of a habeas corpus petition after the effective date of AEDPA, the right to appeal is governed by the certificate of appealability (COA) requirements now found at 28 U.S.C. § 2253(c)). The AEDPA requires the issuance of a COA before a petitioner can appeal the denial of his § 2255 motion. See 28 U.S.C. § 2253(c). Under section 2253(c), the district court will issue a certificate of appealability only if the applicant has made a substantial showing of the denial of a constitutional right. *Id.* A "substantial showing of the denial of a constitutional right" requires that petitioner demonstrate "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack*, 529 U.S. at 482.

Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. *Id.* Defendant's motion was not accompanied by any showing in connection with an appealability issue.

Accordingly, for the reasons set forth in the court's previous Memorandum and Order (Filing No. [107](#)) denying defendant's § 2255 motion, the court concludes that defendant has not made a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c).

Accordingly, the court finds that:

1. A certificate of appealability will not be issued in this case; and
2. The Clerk of Court is instructed to provide the Eighth Circuit Court of Appeals with a copy of this order.

DATED this 13th day of November, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
JOSEPH F. BATAILLON, Chief Judge
United States District Court